The rule that a conference committee cannot include extraneous matter is central to the way that the Senate conducts its business. When we send a bill to conference we do so knowing that the conference committee's work is likely to become law. Conference reports are privileged. Motions to proceed to them cannot be debated, and such reports cannot be amended. So conference committees are already very powerful. But if conference committees are permitted to add completely extraneous matters in conference, that is, if the point of order against such conduct becomes a dead letter, conferees will acquire unprecedented power. They will acquire the power to legislate in a privileged, unreviewable fashion on virtually any subject. They will be able to completely bypass the deliberative process of the Senate. Mr. President, this is a highly dangerous situation. It will make all of us less willing to send bills to conference and leave all of us vulnerable to passage of controversial, extraneous legislation any time a bill goes to conference. I hope the Senate will not go down this road. Today the narrow issue is the status of one corporation under the labor laws. But tomorrow the issue might be civil rights, States' rights, health care, education, or anything else. It might be a matter much more sweeping than the labor law issue that is before us today.

He was absolutely right, Mr. President. We are headed down that slippery slope he described. For the last three years we have handled appropriations in this manner. We've combined bills together, the text is written by a small group of Senators and Congressmen and these bills have been presented to the Senate as an up or down proposition. And now we're doing it with so-called bankruptcy reform.

Conference reports are privileged. It is very difficult for a minority in the Senate to stop a conference report as they can with other legislation. That's why these conference reports are being used in this way. And that's why the rules are supposed to restrict their scope.

Last year, Senator DASCHLE attempted to reinstate rule 28 on the Senate floor. He was voted down, and he spoke specifically about how we have corrupted the legislative process in the Senate:

I wish this had been a one time event. Unfortunately, it happens over and over and over. It is a complete emasculation of the process that the Founding Fathers had set up. It has nothing to do with the legislative process. If you were to write a book on how a bill becomes a law, you would need several volumes. In fact, if the consequences were not so profound, some could say that you would need a comic book because it is hilarious to look at the lengths we have gone to thwart and undermine and, in an extraordinary way, destroy a process that has worked so well for 220 years.

So where does it stop? As long as the majority want to avoid debate, as long as the majority wants to avoid amendments and as long as Senators will go along to get along we will find ourselves forced to cast up or down votes on legislation—a rubber stamp yes or no—with no ability to actually legislate.

And each Senator who today votes for this conference report should know: they may find themselves in the majority today, they may be OK with letting this bill go because they are not offended by what it contains, but be forewarned, the day will come when you will be on the other side of this tactic. Today it is bankruptcy reform, but someday you will be the one protesting the inclusion of a provision that you believe is outrageous.

Regardless of the merits of bankruptcy reform, this is a terrible process. I would urge my colleagues to vote ''no'' to send a message to the leadership. Send a message that you want your rights as Senators back.

Finally, Mr. President, let me end on this note. I think many in this body believe that a society is judged by its treatment of its most vulnerable members. Well, by that standard this is an exceptionally rough bill in what has been a very rough Congress. All the consumer groups oppose this bill, 31 organizations devoted to women and children's issues oppose this legislation.

There is no doubt in my mind that this is a bad bill. It punishes the vulnerable and rewards the big banks and credit card companies for their own poor practices. And this legislation has only gotten worse in sham conference.

Earlier, Mr. President, I used the word ''injustice'' to describe this bill—and that is exactly right. It will be bitter irony if creditors are able to use a crisis—largely of their own making—to convince Congress to decrease borrower's access to bankruptcy relief. I hope my colleagues reject this scheme and reject this bill.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

EMBASSY SECURITY AND BANKRUPTCY CONFERENCE REPORT

Mr. FEINGOLD. Mr. President, let me begin by agreeing with the Senator from Minnesota. The measure before us is a work of injustice. It works injustice on the Senate's procedures. And if it passes, it will work injustice on millions of Americans struggling to cobble together a fresh start after financial hardship. And the measure is also a clear example of the power of money in the legislative process. That's an injustice too, because it puts the needs of the special interests ahead of the needs of the American people.

Let us begin with the procedural injustice. If Senators allow business to be done as is being attempted with this conference report, then we might as well all just go home. Because conference committees will be doing our jobs.

Unlike a normal conference report, this conference report includes absolutely no legislation on the matters that the Senate sent to the conference committee—which, for the information of my colleagues and the people watching, was a bill on embassy security and authorizations for the Department of State, a terribly serious matter. That was not what came back—nothing like that. Instead this conference report brings back to the Senate a complete bill entirely irrelevant to the bill sent to conference. What it brings back is a bankruptcy bill.

That is not the job of a conference committee. It is not the job of a conference committee to search out the legislative vineyards for whatever issues appear ripe for decision. It is not the job of a conference committee to write legislation on matters not committed to it. The conference committee is doing our jobs.

The Constitution confers on the Senate and the House of Representatives certain enumerated powers. Article I, Section 1, of the Constitution provides: ''All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.''

If the Senate so chooses, it may delegate some of its powers to a committee of its Members. But if those Members so delegated recognize no limits on their authority, then they have usurped nothing less than all the powers that the Constitution vests in the Senate itself. The conference committee is doing our jobs.

Who needs a full Senate and a full House of Representatives in Congress assembled? The conference committee is doing our jobs.

Who needs amendments between the Houses on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate to disagree to any House amendments or insist on any Senate amendments on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate to request a conference or agree to a conference on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate to consider any motions to instruct the conferees on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate even to name conferees on the bankruptcy bill? The embassy security conference committee is doing our jobs.

Who needs for Congress to address the increase in the minimum wage that the Senate attached to the last bankruptcy bill? The conference committee is doing our jobs.

Who needs for Congress even to take up, consider, debate, and amend this particular bankruptcy bill, which was introduced on October 11? The conference committee is doing our jobs.

Who needs for the Senate to take any action whatsoever to grant this conference committee power to act on bankruptcy? The conference committee is doing our jobs.

Who needs all the Senators who are not Members of the conference committee? Because the conference committee is doing our jobs.

Who needs for us to fly and drive in to Washington, sometimes from vast distances, from around the country? Because the conference committee is doing our jobs.

Who needs all these Senate offices and all the Senators' staff? A handful of offices would do, four to be exact, because the conference committee is doing our jobs.

As one longtime observer of Senate procedures asked, who died and made them king? Because the conference committee is doing our jobs.

The Senate used to have rules to prevent this sort of thing. Rule 28 of the Standing Rules of the Senate addresses conference committees. Two of that rule's six paragraphs deal with the scope of conferences.

Paragraph 2 of Rule 28 states, in relevant part:

Conferees shall not insert in their report matter not committed to them by either House. . . . If new matter is inserted in the report . . ., a point of order may be made against the report, and if the point of order is sustained, the report is rejected or shall be recommitted to the committee of conference if the House of Representatives has not already acted thereon.

And then, paragraph 3 of Rule 28, dealing with complete substitutes, states:

3(a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of subjects in disagreement.

(b) In any case in which the conferees violate subparagraph (a), the conference report shall be subject to a point of order.

Then, Mr. President, on October 3, 1996, in what seemed like almost a whim, the Senate cast aside this century-old Standing Rule, which I just read in part. To secure last-minute, end-of-session passage of a version of the Federal Aviation Authorization Act that included an extraneous provision of special interest to the Federal Express Corporation, the Senate voted 56 to 39 to overturn the ruling of the Chair and nullify the rule.

At that time, Senator SPECTER called it: ''a very, very serious perversion of Senate procedures.''

Mr. President, conference reports are privileged. Consequently, Senators cannot debate a motion to proceed to a conference report. Senators cannot employ a filibuster to block its consideration.

Conference reports are not amendable. If, as is often the case, and is the case here, the House has already acted on a conference report, motions to recommit the conference report to the conference committee are not in order in the Senate.

Conference reports present the Senate with a take-it-or-leave-it proposition.

As I am sure my colleagues have observed, the Senate works at two speeds: a deliberative speed and a get-down-to-business speed. The regular order under the Standing Rules of the Senate reflects the deliberative speed. We see the getting-down-to-business speed in unanimous consent agreements, the budget process, and conference reports.

When Senators take up these get-down-to-business matters, they enter into a kind of social contract. Senators agree to give up their normal rights under the rules to debate and amend, which are very important in this institution. In exchange, through subject-matter limitations, these procedures grant Senators some notice—and Senators have a right to some notice—of what they can expect.

As Senator KENNEDY said in 1996:

We send a bill to conference . . . knowing that the conference committee's work is likely to become law.

And until October 1996, the precedents governing conference committees prohibited them from bringing back any matter ''entirely irrelevant'' to what the Senate or House passed.

In October 1996, the Senate breached that compact. Now the process can force Senators to live with restrictions on their rights to debate and amend conference reports without having even the slightest idea of the reports' subject matter in advance. And the last-minute additions will probably become law.

Mr. President, I think most would agree, this change is profoundly undemocratic. Conference committees are populated disproportionately by senior Members and Members favored by the leadership. This conference, as a case in point, was signed off on for the Senate by just four men who have been here an average of 22 years. Conference committees are far less representative of the people than the Senate as a whole.

In conference, the majority need not work with the minority party at all. Under this majority, the majority often has not. On this bill, the majority certainly has not.

Conference committees usually work in secret. Senate rules require no open meetings. House practice has generally required one photo opportunity. Thereafter, in the eyes of the Senate's rules, Senators' signatures on the conference report constitute their votes, and nothing further need be done in public.

Mr. President, we know that conference committees have long been the graveyards of amendments. Senator Russell Long used to quip, ''Why fight an amendment on the floor if you can drop it in conference?'' And that appears to be what has happened to the minimum wage increase that the Senate attached to the last bankruptcy bill, and to many other amendments, including some that I proposed, that made the bill somewhat more palatable to the Senate.

And today we see a conference committee becoming the delivery room for a brand new piece of legislation. Like Athena from Zeus's head, a new law is springing whole from the conference committee without floor consideration, debate, or amendment.

Today, the chickens are coming home to roost. This majority, in its continuing crusade to snuff out any opportunity for the minority to debate and amend, now carries this monstrous conference report precedent to its logical extreme.

As I said in my statement on the Military Construction Appropriations bill on May 18, this majority has time after time flouted or changed the Standing Rules of the Senate to ratchet down the rights of the minority. This majority has thus shown a disturbing willingness to cast aside long-held precedents to serve immediate policy ends. Minority party rights have suffered as a result.

Mr. President, four Senators do not constitute the Senate. Yet absent Senate rules to restrain them, small groups of Senators meeting secretly in conference committees can arrogate much—if not most—of the Senate's power.

If the Senate allows the kind of legislation-writing by conference committee that has taken place here, then Senators will have done nothing less than surrender their jobs. They will have surrendered their authority and responsibilities to the very few who happen to be in whatever conference committee is meeting on any given day.

If we allow this practice, we will have perpetrated, in my view, and I don't think this is an exaggeration, one of the greatest abdications of responsibility in the history of the Senate.

Let us be clear about why this is happening. When the Senate considered the last bankruptcy bill, in November of 1999, Senator KENNEDY offered an amendment to provide working Americans a much-needed increase in the minimum wage. The Republican caucus added 112 pages of tax breaks, costing $103 billion, most of which would have gone to the top fifth of the income distribution.

The Senate could have sent a bill on bankruptcy and the minimum wage to conference with the House. But the Constitution requires that revenue measures originate in the House. So the plain effect of the Republican tax break amendment was to kill the bankruptcy bill and also to kill the minimum wage increase.

And now, the majority seeks to take the remains of that dead bankruptcy

bill from the graveyard, and stitch it together with material from completely different entities that they have found in various legislative dissecting rooms. The result is a not a modern Prometheus, but a monster, artificial and hideous.

Now why did the majority engage in this extremely unusual procedure? Why seek a conference committee that could be used to work its will in secret and bring to the floor a new bill that will be voted on up or down with no amendments? Was it to bring forward a bill that is crucial to our national security? No. Are the experts in the field clamoring for it? No.

I have talked to bankruptcy judges, bankruptcy trustees, practitioners representing both creditors and debtors, law professors who specialize in this area, and they all strongly oppose this bill. No, the clamor is coming from another quarter. The special interests. The interests that want this bill so desperately that they have pushed the Majority to use this most unusual, almost unprecedented procedure, are the big banks and the credit card companies. They want this reform bill because it is skewed toward their interests. This is a bill written by and for the credit card companies. That's why all the nonpartisan experts on bankruptcy law oppose it.

So why is it before the Senate today? Mr. President, for over a year now, I have been Calling the Bankroll on the Senate floor, to inform my colleagues of the campaign contributions, particularly soft money contributions, that have been given by interests that would benefit from or that oppose legislation that we are considering here in the Senate. I have often stated that these contributors set the agenda on this floor. And this bill, I'm afraid, is a poster child for the influence of money on the legislative process.

Mr. President, Common Cause put out a report this spring showing the stunning amount of money that the credit industry has contributed to members of Congress and the political parties in recent years. $7.5 million in 1999 alone, and $23.4 million in just the last three years. One company that has been particularly generous is the MBNA Corporation, one of the largest issuers of credit cards in the country. In 1998, MBNA gave a $200,000 soft money contribution to the Republican Senatorial Committee on the very day that the House passed the conference report and sent it to the Senate—not terribly subtle.

In December 1999, MBNA gave its first large soft money contribution ever to the Democratic party—it gave $150,000 to the Democratic Senatorial Campaign Committee on December 22, 1999, Mr. President, right in the middle of Senate floor consideration of the bankruptcy bill. And just a few months ago, on June 30, 2000, Alfred Lerner, Chairman and CEO of MBNA—one person, one individual—gave $250,000 in soft money to the RNC.

Mr. President, the following figures are from the Center for Responsive Politics, through the first 15 months of the election cycle, and in some cases include contributions given later in the election cycle. MBNA and its affiliates and executives gave a total of $710,000 in soft money to the parties. Visa and its executives gave more than $268,000 in soft money to the parties during the period. Mastercard gave nearly $46,000.

Finance and credit card companies gave $5.4 million in soft money, PAC and individual hard money contributions in the first 15 months of the 2000 election cycle. When you add that to the $14.6 million that the commercial banks gave, you have, Mr. President, in the midst of all these other special interests, one of the most powerful lobbying forces in public policy today. And you just might have the answer, in fact you do have the answer, to the question, ''why is this bill before the Senate today?''

Some in this body say that the public doesn't care about campaign finance reform Mr. President. But I would be willing to bet that if you took a public opinion poll and asked the question whether the Senate should use extraordinary procedural means to send a campaign finance bill that would ban soft money to the President instead of this bankruptcy bill, the answer would be an overwhelming ''Yes.''

After all, the House passed the Shays-Meehan campaign finance reform bill last year by an overwhelming margin. And the President would sign that bill. All that is needed for campaign finance reform to become law is Senate approval, and a majority of Senators supports this bill.

On the other hand, the President has said repeatedly that he will veto this bankruptcy bill. So even if this procedural gambit is successful, the bill won't become law.

But the campaign finance reform bill doesn't have millions of dollars in campaign contributions behind it, the same way this bankruptcy bill does. So the majority persists, the majority persists in trying to force this bill through the Congress in the waning days of the session. And it may get its way. But it will not pass this bill into law.

Mr. President, this bill has millions of dollars of soft money contributions behind it. And I'm sure that the donors of those contributions believe they are doing the right thing for their companies by giving them. But it is very interesting that the leaders of major corporations, whose money drives this soft money system, are increasingly uncomfortable with it. In a poll of top business executives from the 1,000 largest companies in the United States, released last Wednesday by the Committee for Economic Development, 79 percent of the respondents said they believe the campaign finance system in this country is broken and needs to be reformed. Sixty percent of respondents agree that soft money should be banned.

So even among those interests that benefit from the soft money system, there is strong support for ending it. And the reason for that, I believe, is two-fold. First, America's businesses and business people are tired of being hit up for money. Year after year, these credit card companies have been sending money to the parties and Members of Congress hoping for some return, and I think they are tired of it.

Second, Mr. President, business leaders in this country are coming to realize how bad this system looks to the public, how poorly it reflects on the legislative and political process. The word is out, for example, about this bankruptcy bill. It is not necessary, it goes too far, it's unfair and imbalanced. Newspapers have editorialized against it; law professors have written op-ed pieces about what's wrong with it; news magazines have done exposes of the money behind it. The monied interests have succeeded in getting the bill back to the floor, and they may get it through the Congress. But if it passes, the bill and this body will not have the respect of the American people or the press. That's why America's business leaders want reform of the system Mr. President, because they know very well it taints all of us, even the legislation that they so desperately want the Congress to pass.

Mr. President, I invite my colleagues to look about this Senate Chamber and examine its form. Since January 4, 1859, this Senate has done business in this open room, ringed all around by galleries for the people. To the west, behind me, are the public visitors' galleries. To the north, behind the Presiding Officer, are the wooden desks of the press, who report our proceedings to the Nation.

The Senate began holding sessions open to the public more than 206 years ago, on February 20, 1794. The Senate opened galleries for the public in December 1795. The first radio broadcast from the Senate Chamber took place in March of 1929.

Some Senate hearings appeared on television as early as 1947. Many credit ABC's live coverage of the Army-McCarthy hearings in 1953 with helping to turn the tide against McCarthyism. Twenty years later, another generation learned about democracy as Senator Sam Ervin presided over the Watergate hearings in 1973.

The Senate began radio broadcasts of floor debate in 1978 with the debate on the Panama Canal Treaty. The House began televising its floor proceedings in 1979. The Senate opened its proceedings to television on a trial basis in May 1986. And since June 2, 1986, C–

Span has carried our debates to viewers throughout the Nation.

We conduct ourselves in the open like this because the Senate best serves the Nation when it conducts its business on this Senate floor, open to the public view. It is here, on this Senate floor, that each of this Nation's several states is represented. And it is here, in their debate and votes on amendments and measures, that Senators become accountable to the people for what they do.

The Senate is distinctive for the amount of work that it used to do on the Senate floor. In contrast to the House of Representatives, where more work is done in committee, the Senate used to do more work on the floor.

The majority today diminishes the Senate floor in favor of the backroom conference committee, chosen to address these issues by none but themselves, accountable to none but themselves, and open to observation by none but themselves.

The proceedings of the Senate floor are open to view because, as Justice Louis Brandeis wrote, ''Sunlight is said to be the best of disinfectants.''

William Jennings Bryan put it this way: ''The government being the people's business, it necessarily follows that its operations should be at all times open to the public view. Publicity is therefore as essential to honest administration as freedom of speech is to representative government.''

It is a legal maxim that ''Truth fears nothing but concealment.'' And it follows as night follows day that concealment is the enemy of truth.

As Justice Brandeis also wrote, ''Secrecy necessarily breeds suspicion.'' How will the public gain confidence in the work of the Senate if the public cannot see its operations?

Morley Safer once said that ''All censorship is designed to protect the policy from the public.'' If the majority had confidence in its policy, would it not do its business in the light of day?

As Senator Margaret Chase Smith said on this Senate floor on September 21, 1961, ''I fear that the American people are ahead of their leaders in realism and courage—but behind them in knowledge of the facts because the facts have not been given to them.''

In another context, Senator Robert Taft said on this Senate floor on January 5, 1951:

> The result of the general practice of secrecy has been to deprive the Senate and the Congress of the substance of the powers conferred on them by the Constitution.

And as Senator KENNEDY, our distinguished colleague, warned in 1996:

> This . . . is a vote about whether this body is going to be governed by a neutral set of rules that protect the rights of all Members, and by extension, the rights of all Americans. If the rules of the Senate can be twisted and broken and overridden to achieve a momentary legislative goal, we will have diminished the institution itself.

And that, in the end, is what has happened here. Four Senators who had the good fortune to be named to confer on an embassy security bill have taken it upon themselves to conduct the business and exercise the powers that the Constitution vested in the Senate and the Congress.

In 1973, the nuclear physicist Edward Teller said, ''Secrecy, once accepted, becomes an addiction.'' Mr. President, my fear is that this majority will simply continue down this path of snuffing out minority rights, creating one legislative Frankenstein after another.

Senator KENNEDY warned in 1996: ''It will make all of us less willing to send bills to conference . . . .'' My fear is that we can no longer trust any conference committee.

On this Halloween, I fear for what legislative creatures will walk abroad as long as this majority holds power. I, for one, will stand guard against them and fight them. In defense of the Senate, I urge my colleagues to join me, Senator WELLSTONE, and others, and oppose this conference report.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I hope every Democrat or staff member heard the words of Senator FEINGOLD. His words will be memorable in terms of the record of the Senate. They are prophetic for now and in the future. I thank the Senator for the power of his presentation, for the power of his words.

I ask the Senator from Illinois how much time he thinks he will need.

Mr. DURBIN. Twenty minutes.

Mr. WELLSTONE. Mr. President, I yield 20 minutes to the Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, before beginning, I say to the Senator from Minnesota, two of our colleagues, Senator DORGAN and Senator HARKIN, have asked for 10 minutes each, I think Senator HARKIN first. I do not know if the Senator wants to make that part of his unanimous consent request at this time.

Mr. WELLSTONE. I did tell Senator HARKIN I would grant him some time. I want to allow some time for myself to speak in opposition to this as well. Let me see how things go.

Mr. DURBIN. I thank the Senator from Minnesota.

BANKRUPTCY

Mr. DURBIN. Mr. President, you can expect the Halloween thing to be part of most of our speeches on the floor today regardless of the issue at stake. It is Halloween, and children of all ages will be dressing up in their favorite costume and ringing doorbells yelling: Trick or treat.

Our Halloween tradition that we enjoyed as kids, and even as adults, dates back to Celtic practices, when on this day witches and other evil spirits were believed to roam the Earth, playing tricks to mark the season of diminishing sunlight.

The 106th Congress is waning. Our legislative days will soon be coming to an end, and we will be ending the legislative term with a cruel legislative trick: a bankruptcy conference report masquerading as a State Department authorization bill. You know Congress is close to adjournment when slick procedural maneuvers are used to bring a one-sided work product to the Senate floor.

The majority found a shell conference report, they basically held a meeting without an official conference committee, struck the contents of the original bill, and plugged in the bankruptcy bill that we have before us today. Rather than negotiate with Democrats directly or work to produce a bipartisan bill that the President might support, they went back to their old tactic: Take it or leave it; this is the Republican version; this is the version supported by business. Take it or leave it.

When I hear all the claims in the Presidential campaign about bipartisanship, I shake my head when I look at the Republican leadership in the Senate and the House which continuously stops the Democrats from participating. If we are going to have bipartisanship, shouldn't we have it on a bill as important as bankruptcy reform?

Let me say from the outset, I support bankruptcy reform. Two years ago, I was on the Judiciary Committee and the subcommittee with jurisdiction over this issue. Senator GRASSLEY and I spent countless hours with our staffs trying to come up with meaningful and fair bankruptcy reform.

We had a good bill. Ninety-seven Members of the Senate voted for it. I thought that was a pretty good endorsement of a bipartisan effort, but it has gone downhill consistently ever since.

That bill was then trapped in a conference committee that was totally Republican, no Democrats allowed. They brought back a work product that was the byproduct, I guess, of the best wishes of the credit industry. It had no balance to it whatsoever. Frankly, it was defeated. Then we turned around—I guess it wasn't called; it would have been defeated by Presidential veto.

Then over the next 2 years, others worked on this issue, and I hoped we would return to a bipartisan approach. It did not happen. So for all of the calls for bipartisanship by the Republican side of the aisle, when it comes to conference committees, no Democrats are allowed. Republicans said: Take it or leave it. In this case, we should definitely leave it.